

**UST Cleanup Program Task Force Meeting
Break-Out Sessions
4 August 2009**

Pros and Cons Changing Statutes, Regulations, Policy

Statute: Requires legislation, best case implementation in Jan 2012

Regs: Implement statute, same legal standing as statute

Policy: No force of law, Resolutions create policy, legal risk, can force Regional Boards to comply

Basin Plans: Very difficult to modify, easier to overlay than change

Short Term Goal: Develop Reso/Policy – Petroleum specific

Long Term Goal: Change Regs

Revised Article 11

Proposed Table of Contents (in no particular order)

1. Definitions (incl source, pathway, receptor)
2. Site Conceptual Model
3. Investigate per source/pathway/receptor
4. Expedited assessment
5. Vapor assessment
6. Risk assessment
7. Time frame for use of impacted gw
8. How much source removal is adequate
9. Closure criteria
10. Appeals process

Closure Resolution Combined RB Approach

Make use of existing SB Resolutions that closed cases on appeal (e.g. Mathew Walker 1998)

Use as template to close cases right now

Rationale

- Site concept model
- Sources/pathways/receptor

Probability of using GW

- Set-backs per local reg's should not be considered potential source of drinking water

Informal Dispute Resolution

“As Is”

- Appeal (formally petition directive order) = Formal
 - 30 days → lost rights (statutory)
 - Must raise all issues in first submittal
 - Short time to object
 - Must have attorney → “Expensive”
 - Agency has unlimited time to respond

Aside can take to – full RWQCB Board

Petition goes to attorney (technical, legal)

- RWQCB related

Pre-Appeal – SWRCB recommendations

- Take thru existing agency (LOP/RWQCB)

Current closure evaluation process – RWQCB/LOPs

- Use of results for resource allocation

Proposed – “Informal” Dispute Resolutions

- No strict time limits
- Traditional Law =
- Discuss reasonableness w/ outside entity
- “Out-of-the-box” – thinking
- Expertise
- Conduit
- Ombudsman Report directly to the State Board (existing report to – RWQCB)
- Cognizable → # of cases that can be handled
 - Increase resources if appropriate
- Toll formal petition process – Time restrictions

Roles

- Roles & responsibility by entity
- Oversight fee budget
 - Conditions in contracts
 - Audit framework (lead consistency)
 - Specific “Productivity & efficiency”)
- SWRCB takes part of RWQCB
 - Reallocate
 - PYs budget
 - Other Program \$ (NDDDES, Stormwater, Irrigated AG, TMDL, Septic, Dairy)

- State Board pass an order to authorize exec director to issue closure letter
 - Ron Chinn's Doc for consideration
 - Streamline
 - RWQCB
- Closure Justification Packages – RP (Dovetail LUFT Manual rewrites)
 - (cannot simply rely on GEOTRACKER)
 - All data compiled – LIAs, LOPs,
- Closure Panel/Closure Czar = State Level
- 5 Yr review/Prioritization
 - Allan Pattan doc for consideration

Solutions (Accountability and Administration)

State Board to exercise its jurisdiction

- unify the agencies
- Roles of RP, consultants, & Regulators – reg should serve their constituents
- Site should not sit inactive for long periods of time
- Implement a 5 yr claim expiration
 - Tie an agency accountability to this
- Implement a 10% deductible for each claim or increase deductible
- Develop hard time-lines for reviews, submittals, etc.
- Realize improvements in opener/process – limit call & response
- Re-engage RPs
- One-day training requirement for RPs, consisting of:
 - Clean-up 101
 - Investigation overview
 - Service selection, ie: consulting selection

Groundwater: Non-Degradation

If Board develops a new “resolution” – or “policy” on non-degradation what would be the mechanism that would insure all Agencies follow it and not just fall back on their Basin Plan?

- Anti-Deg Policy – Allows degradation, must be to the benefit of the State
- Non-Deg: No degradation allowed

Question for Regs: How can we close sites above MCLs?

Answer: R2 allows closure above MCL, as long as natural processes will reduce concentration w/in reasonable time. Other areas effectively enforcing non-deg

Why can't SWRCB force all Boards to enforce same policy?

Discussion of Site Specific/Regional issues

- confined/recharge areas
- beneficial uses – drinking H2O, others

- free product & low risk closure

How would you change Anit-deg-Policy

- no change except to put in statue/reg/policy that would force consistency
- add risk based language

How is Point of Compliance defined for risk?

Basin Plans

Need to consider

- Current & potential use of GW for drinking water
- Apply Basin Plan to varying conditions in Basin
- Using discretion to apply to specific sites
- Prioritize areas for protection

Beyond Risk

- Property value
 - Try to discourage cleanup to a standard greater than its current use
 - Liability & actions by neighbors
 - Agency not necessarily driven to restore prop. Value
- Heirs & successors
- Rights & Responsibilities
 - The right of a property owner to decide, w/in a reasonable frame, what is appropriate for them
- Recommendation
 - Recognizing human limitations
 - Remove what is reasonable recoverable
 - So long as the funding resource is robust (predictably)
 - To hedge against plausible neg. outcomes
 - Prioritize response actions & regulatory directives → target hi priority sites
 - Lower priority can wait their turn (to address 80/20 role eventually)